

Powes and Kirtmans Case adjudged, Nat Brev Fo: 21. Brook tit Error 34. 3. H. 4. 6.

Vbi Eadem Ratio ibi idem Jus esse debet.

3: The Law seemeth to have a far greater care of the Fact than it hath of it self; for it will not believe the Fact vntill it be sworn by Twelve Men of the Vicinage where the Fact did arise, and if Eleaven of the Inquest be Agreed about the Fact, and the twelfth man not Agreed, there can be no Verdict, but in the Law it is otherwise for there the Major part of the Judges do give Judgm^t what the Law is, although the other Judges dissent; but as to the Fact, the whole Inquest must Agree before there can be any Verdict, and when they are Agreed vpon the Fact, and have delivered this to the Court, then is it said to be a Verdict which is of so much esteem in the Law that it shall be credited vntill it be vndone by Attaint etc^a

4: When the Matter of Fact is once tryed, there is not any need to trye that again; for being once well and sufficiently tryed the Law is contented therewith; and in this principall case there is not any thing as touching the Fact Assigned for Error (but in Law that the bond was not a good bond only) and the Law intends that the Jury tryed the fact, Viz^t whether the ship had taken in Tob^o before bond given or not, and they finding for the Def^t it is as much as if they had in express Words said that she did not, and then there being not any Error in the prosecution of the said information, the Matter of Fact (as it seemeth to me) is determined and the Verdict of the Jury is to stand in full force, and the Judges could do no otherwise than Credit the Verdict and Give Judgm^t according to it; for the Judges are not to take notice, as I do humbly conceive, whether the Bond was good or not, being a thing meerly collaterall and was not any part of the Record which was before them; But if the Kings Counsell or they that were of Counsell with the Informer would not Demurr they have tacitly confessed the bond given in Evidence to be good, and the Judges are to take it to be so, vnless the Kings Counsell or the Counsell for the informer shew the contrary vpon their Demurrer.

5: In all cases where the King is party 'tis a Rule in Law that the King being Caput Reipublicæ et Juris, Requires th^t Justice should be done between him and his people with all the favour that may be towards his people Vide Doc. and Stud. Chap. 48.

This I do humbly Offer to your Ex^{ncy} as my present Opinion in the principal Case and begg leave to Subscribe my self
June 17th 1696.

May it please your Ex^{ncy}

Yo^r Ex^{ncies} most humble Serv^t

R Gouldesborough

June 22th 1696.

I do concur with the above Opinion with this further Addition, that I humbly conceive, that at the Tryall it was not Debated whether the Def^t